

KUTAK ROCK LLP

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

IN RE: JENNIFER A. CRUMBLE,

Case No. 21-30027-KLP
Chapter 13

Debtor.

DARNELL F. BRANCH and
ROSETTA BRANCH,

Movants,

v.

JENNIFER A. CRUMBLE, and
CARL M. BATES, TRUSTEE,

Respondents.

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
AND CONSENT ORDER GRANTING RELIEF**

Darnell F. Branch and Rosetta Branch (“Movants”), by counsel, move for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure, and states the following in support of this motion:

PARTIES

1. Jennifer A. Crumble (the “Debtor”) filed a voluntary petition under Chapter 13 of the Bankruptcy Code on January 6, 2021.

2. Movants are creditors of the debtor by virtue of injuries sustained in connection with an automobile accident with the Debtor.

3. Carl M. Bates (the “Trustee”) is the Trustee for the Chapter 13 bankruptcy estate. Movant does not believe the Trustee is a necessary party to the adjudication of this Motion because the relief sought does not affect property of the estate. However, Movant names the Trustee as a nominal defendant as a precaution.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this Motion pursuant to 11 U.S.C. § 1334 and 28 U.S.C. § 157.

5. This Court has personal jurisdiction over all necessary parties because the parties are citizens of the Commonwealth of Virginia and are located within this district.

6. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

7. Venue lies in this Court pursuant to 28 U.S.C. § 1409.

RELIEF REQUESTED

8. On or about May 17, 2017, Darnell F. Branch was a driver and Rosetta Branch was a passenger in a vehicle involved in a car collision caused by the Debtor (the “Accident”). As a result of the Accident and injuries sustained in connection therewith, Darnell Branch and Rosetta Branch filed separate suits against the Debtor in the Circuit Court for the City of Richmond [Case Nos. CL1800443200 and CL19002356] (the “Suits”). The Movants will ultimately seek recovery against certain non-Debtor parties who may be liable, including the Debtor’s insurer (the “Insurer”), which may require that

the Insurer provide coverage in connection with the Suits. The Suits, to which the Debtor is a necessary named party, has been stayed by virtue of the Debtor's bankruptcy filing.

9. Movants seek relief from the automatic stay authorizing them to initiate and/or continue their civil proceeding, including the continuation of the Suits, the filing of a new suit, if necessary, or engagement in any related actions, including mediation and other settlement discussions. Such actions are necessary to obtain relief in connection with the Accident. Movants seek such relief solely for the purpose of pursuing any applicable coverage from non-Debtor parties, including the Insurer. The Debtor is a necessary and critical party to any suit and any such discussions so, as a matter of necessity, Debtor may be required to testify.

10. Bankruptcy courts, including this Court, have held that cause exists under §362(d) to modify the automatic stay to permit injured plaintiffs to pursue their personal injury suits in state court. *In re Fowler*, 259 B.R. 856 (Bankr. E.D. Tex. 2001); *In re New York Med. Group, P.C.*, 265 B.R. 408 (Bankr. S.D.N.Y. 2001); and *Pieklik v. Hudgins (In re Hudgins)*, 102 B.R. 495 (Bankr. E.D. Va. 1989).

11. Moreover, the state court is the proper forum to consider Movants' claims. The Accident raises issues of state law and involves a claim that is a non-core matter and specifically excluded from the jurisdiction of this Court pursuant to 28 U.S.C. § 157. Core matters are defined to explicitly exclude "personal injury tort or wrongful death claims." 28 U.S.C. § 157(b)(2)(O). Given the nature of the claim, Movants are entitled to relief from stay for the reasons set forth above.

12. The Debtor and the Trustee have consented to the relief requested herein and a consent order is attached hereto as **Exhibit A**.

WHEREFORE, Movants request the Court to modify the stay as requested above and to award any further relief the Court deems proper.

**DARNELL F. BRANCH and
ROSETTA BRANCH**

By: /s/ Jeremy S. Williams

Counsel

KUTAK ROCK LLP

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Facsimile: (804) 783-6192

Counsel for Darnell F. Branch and Rosetta Branch

CERTIFICATE OF SERVICE

Pursuant to the Local Rules of this Court, I hereby certify under penalty of perjury that on January 20, 2021, all necessary parties were served via ECF, e-mail and regular mail as follows:

Counsel for Debtor:

James E. Kane
Kane & Papa, PC
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Debtor:

Jennifer A. Crumble
135 Drybridge Court
Sandston, VA 23150

Chapter 13 Trustee:

Carl M. Bates
P. O. Box 1819
Richmond, VA 23218

/s/ Jeremy S. Williams
Counsel

EXHIBIT A

KUTAK ROCK LLP

Jeremy S. Williams (VSB # 77469)

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Telephone: (804) 644-1700

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Counsel for Darnell F. Branch and Rosetta Branch

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CARL M. BATES, TRUSTEE,

Respondents.

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

Upon consideration of the motion of Darnell F. Branch and Rosetta Branch, to modify the automatic stay; it is

ORDERED that the automatic stay imposed by 11 U.S.C. § 362 is modified *nun pro tunc* to the filing date of the Suit, to permit the movants and their successors and assigns to proceed with the lawsuits styled as *Branch v. Crumble*, Case Nos. CL1800443200 and CL19002356 and pending before the Circuit Court for the City of Richmond, to initiate a new lawsuit or, multiple lawsuits, if necessary, or engage in any related actions, including mediation and other settlement

discussions, and any related cases, solely to pursue any available insurance coverage or recovery from any non-debtor parties.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE

I ask for this

/s/ Jeremy S. Williams

KUTAK ROCK LLP

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Richmond, Virginia 23219

Telephone: (804) 644-1700

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Counsel for Darnell F. Branch and Rosetta Branch

Seen and No Objection:

/s/ James E. Kane

James E. Kane

Kane & Papa, PC

1313 East Cary Street

P.O. Box 508

Richmond, VA 23218-0508

Counsel to the Debtor

/s/ Carl M. Bates

Carl M. Bates

P.O. Box 1819

Richmond, VA 23218

Trustee

CERTIFICATION OF ENDORSEMENT

Pursuant to the Local Rules of this Court, I hereby certify under penalty of perjury that all necessary parties have endorsed this Order. The undersigned further certifies that the foregoing Consent Order Modifying Automatic Stay is substantially identical to the form order required by Administrative Order and that no modifications, additions, or deletions have been made.

/s/ Jeremy S. Williams

Attorney for Movants

SERVICE LIST

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